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State v. Spencer Respondent's Brief Dckt. 40392

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 40392
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	CR-2011-20212
)	
GEORGE LEE SPENCER,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE DEBORAH A. BAIL
District Judge

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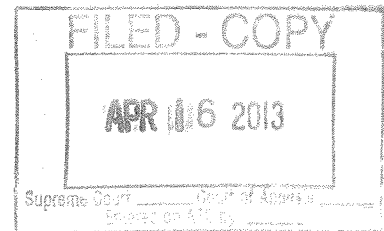


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STATEMENT OF THE CASE

Nature of the Case

George Lee Spencer appeals from his conviction on plea of guilty to felony DUI. Spencer argues the Supreme Court denied him due process in denying Spencer's motion to augment, and that the district court abused its discretion in denying his motion to dismiss.

Statement of Facts and Course of Proceedings

Spencer failed to maintain his lane while driving and was stopped by Boise police. (PSI, p. 2.) Spencer admitted he had been drinking alcohol. PSI, p. 2.) Police administered field sobriety tests and breath tests yielding results of .132 and .131. (PSI, p. 2.) In a search incident to arrest, officers found a metal pipe that tested presumptively positive for marijuana. (PSI, p. 2.)

The state initially charged Spencer with four misdemeanors: DUI, driving without privileges, possession of drug paraphernalia, and failure to provide proof of insurance. (R., pp. 8-10.) At his initial arraignment, Spencer was advised – in writing – of his rights, including the right to plead guilty or not guilty at that time. (R., p. 14, 106; Appellant's brief, p. 2.) A public defender was not present, but was appointed, and Spencer entered a plea of not guilty. (R., p. 14.)

At his pre-trial conference, Spencer failed to appear, and the magistrate court issued a bench warrant. (R., pp. 33, 40.) The state filed an amended¹ complaint. (R., pp. 35-37, 41.) Spencer appeared for his second arraignment

¹ The Amended Complaint changed the charge for driving without privileges to a second offense. (Compare R., p. 8 with p. 36.)

and expressed his intent to plead guilty to all charges. (R., pp. 116-17; 4/5/12 Audio Exhibit A.) However, at Spencer's plea and sentencing later that month, the state advised it was amending the DUI charge to a felony, in light of Spencer's two prior misdemeanor DUI convictions. (R., pp. 75-76.) The state later filed its Information² setting forth the amended charges. (R., pp. 92-94.) At his arraignment on the Information, Spencer pled not guilty. (R., p. 100.)

Spencer filed a motion to dismiss, raising largely the same arguments now raised on appeal. (R., pp. 102-08.) The district court denied the motion. (R., p. 120.) Spencer then entered a conditional guilty plea (R., p. 121) to the felony DUI charge,³ reserving the right to appeal the decision denying his motion to dismiss (R., p. 125.) The district court sentenced Spencer to a term of 10 years with one year fixed. (R., p. 134.) Spencer timely appeals. (R., pp. 133, 137-39.)

On appeal, Spencer moved to augment the record to include transcripts from his first two arraignments. (2/7/13 Motion to Augment.) The state objected (2/14/13 Objection), and the Court denied the motion (3/1/13 Order).

² An Information Part II was later filed, reflecting Spencer's status as a persistent violator. (R., pp. 98-99.)

³ The remaining counts were dismissed by agreement. (R., p. 133.)

ISSUES

Spencer states the issues on appeal as:

1. Did the Idaho Supreme Court deny Mr. Spencer due process when it denied his motion to augment?
2. Did the district court abuse its discretion when it denied Mr. Spencer's motion to dismiss?

(Appellant's brief, p. 7.)

The state rephrases the issues as:

1. Has Spencer failed to show that transcripts he sought to add to the appellate record were relevant or necessary for adequate, effective review, and thus failed to demonstrate a constitutional violation by this Court in denying his request?
2. Has Spencer failed to demonstrate that the district court abused its discretion by denying Spencer's motion to dismiss?

ARGUMENT

I.

Spencer Has Failed To Show That Transcripts He Sought To Add To The Appellate Record Were Relevant Or Necessary For Adequate, Effective Review, And Thus Fails To Demonstrate A Constitutional Violation By This Court In Denying His Request

A. Introduction

This Court denied Spencer's request for transcripts from his 12/20/11 and 4/5/12 arraignments. (3/1/13 Order.) In his brief on appeal, Spencer argues that the Court's denial of augmentation with these transcripts violates his right to due process. (Appellant's brief, pp. 8-9.) Neither the facts or applicable law support Spencer's argument.

B. Denial Of The Motion to Augment Does Not Violate Spencer's Constitutional Rights Because Audio Recordings Of The Hearings For Which Transcripts Were Requested Are Part Of The Court's Record And Ensure Adequate Appellate Review

The U.S. Supreme Court has said that, although a destitute defendant is entitled to "adequate and effective appellate review," the state need not provide transcripts whenever the defendant requests it. Griffin v. Illinois, 351 U.S. 12, 20 (1956); see also State v. Morgan, 153 Idaho 618, ___, 288 P.3d 835, 838 (Ct. App. 2012). Where adequate and effective review can be provided through other means, such means suffice. Griffin, 351 U.S. at 20. In this case, an audio recording of Spencer's December 2011 arraignment is part of this Court's record. (CD Exhibit of 12/20/11 Arraignment.) The recording is the evidence Spencer put before the trial court and is adequate and effective for counsel and this Court to review and consider what took place during Spencer's December 2011 arraignment.

As to the April 2012 arraignment, an audio recording of that hearing was attached to the state's response to Spencer's motion to dismiss. (See R., p. 116.) The recording is also part of this Court's record and need not be transcribed to ensure adequate and effective review by either party or the Court. Spencer has therefore failed to demonstrate that transcriptions of either the December 2011 or April 2012 arraignments are warranted.

Also, as the state argued in its objection to Spencer's motion to augment (2/14/13 Objection), the appellate courts "will not consider issues not raised in the court below and raised for the first time on appeal." Smith v. State, 146 Idaho 822, 840, 203 P.3d 1221, 1239 (2009). Spencer did not raise an issue regarding his April 2012 arraignment to the district court. (R., p. 105.) Thus, any issue regarding his April 2012 arraignment may not be raised in this appeal. Given the holding in Smith, a transcript of Spencer's April 2012 arraignment is not needed for adequate and effective review.

For these reasons, Spencer's challenge to this Court's denial of his motion to augment fails.

II.

Spencer Has Failed To Demonstrate That The District Court Abused Its Discretion In Denying His Motion To Dismiss

Spencer argues that the district court abused its discretion in denying his motion to dismiss. (Appellant's brief, pp. 9-11.) The appellate courts review a district court's decision denying a motion to dismiss for abuse of discretion. State v. Martinez-Gonzalez, 152 Idaho 775, 778, 275 P.3d 1, 4 (Ct. App. 2012). For this, the appellate court considers whether the district court (1) understood

the issue was discretionary; (2) acted within its discretionary scope and consistent with applicable legal standards; and (3) exercised reason. State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011). Given the facts, Spencer simply cannot show that the district court abused its discretion.

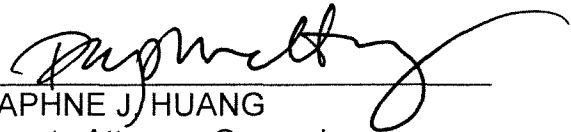
According to Spencer, the magistrate “did not call upon [him] to plead to the charges at the first arraignment.” (Appellant’s brief, p. 10 (citing R., pp. 104-05, 115-16).) However, the law did not require the magistrate to do so. Under Idaho’s Criminal Rules, a defendant may plead guilty or not guilty. I.C.R. 11(a). Spencer does not dispute that he received a written statement of rights at his first arraignment, which included notice of this right. (Appellant’s brief, pp. 10-11; R., p. 106.) But notably, Spencer had requested and was appointed counsel at his first arraignment, but no public defender was present. (R., p. 14.) Thus, it was entirely appropriate that the magistrate court did not inquire whether Spencer wished to plead guilty without counsel.

Significantly, while a defendant may plead guilty, the law does not require the court to accept such a plea. Schoger v. State, 148 Idaho 622, 629-30, 226 P.3d 1269, 1274-75 (2010). Citing the broad discretion given a trial court in accepting or rejecting a guilty plea, the court in Schoger v. State held that “no provision of Idaho law, including I.C.R. 11, requires a court to accept a guilty plea.” Id. Thus, even if Spencer had insisted upon pleading guilty at his first arraignment, absent counsel, the magistrate would have been under no legal obligation to accept it. Neither the facts nor law support Spencer’s arguments here.

CONCLUSION

The state respectfully requests that this court affirm its denial of Spencer's motion to augment, and the district court's order denying Spencer's motion to dismiss.

DATED this 16th day of April, 2013.



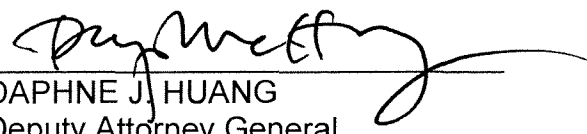
DAPHNE J. HUANG
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of April, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

BEN PATRICK MCGREEVY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



DAPHNE J. HUANG
Deputy Attorney General

DJH/pm